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January 7, 2016

By ECF

The Honorable Frank Maas
Chief U.S. Magistrate Judge
United States District Court
Southern District of New York
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl St.
New York, NY 10007-1312

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: <u>01/11/2016</u>
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Re: 1:10-cv-03959, *Kriss et al v. Bayrock Group LLC et al.*
Plaintiffs' request for a pretrial conference

Dear Chief Judge Maas:

We represent defendants Bayrock Group LLC, Bayrock Spring Street LLC, Bayrock Ocean Club LLC, Bayrock Whitestone LLC, Bayrock Camelback LLC, Bayrock Merrimac LLC, Tevfik Arif and Julius Schwarz (collectively herein, "Bayrock"). We write concerning the Court's scheduling of a pretrial conference (Dkt. No. 249) in response to plaintiffs' January 4, 2016 letter requesting the conference to discuss the briefing of defendants' motions to dismiss and plaintiffs' intention to serve discovery requests before the motions to dismiss are decided.

While Bayrock is not opposed to a pretrial conference in this matter, Bayrock respectfully suggests that a pretrial conference on these issues would be more appropriately held before Judge Schofield. Judge Schofield will be the one deciding the motions to dismiss, and therefore, to the extent that briefing on the motions may be consolidated or schedules adjusted, this should be done according to Judge Schofield's preferences. Judge Schofield has already indicated her desire to control the briefing schedule as she has signed each stipulation between plaintiffs and the various defendants concerning briefing schedules. Your Honor has previously indicated that issues concerning motions to dismiss should be brought before Judge Schofield, instructing the parties in your August 13, 2015 Report and Recommendation to Judge Schofield (Dkt. No. 178) that "if any of the defendants wishes to challenge the sufficiency of the SAC, or raise other concerns, they can seek a pre-motion conference with [Judge Schofield]."

With regard to discovery, Bayrock submits that the decision on whether to permit discovery before the resolution of the motions to dismiss should also be made by Judge Schofield. It is Bayrock's position that no discovery should take place during the pendency of the motions to dismiss. Courts in this District routinely deny requests to take discovery while a dispositive motion to dismiss is pending, provided that the motion is "not unfounded in the law" and "makes substantial arguments for dismissal of many, if not all, of the claims asserted."

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Negrete v. Citibank, N.A., No. 15 CIV. 7250 (RWS), 2015 WL 8207466 (S.D.N.Y. Dec. 7, 2015). As with other issues concerning the motions to dismiss, Bayrock respectfully submits that this issue would be more appropriately decided by Judge Schofield.

We have consulted with counsel for all defendants, and they join in this request.

Respectfully submitted,

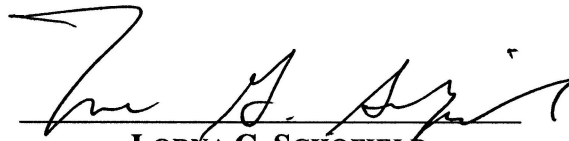


Walter A. Saurack

cc: All counsel (by ECF)

APPLICATION DENIED. This case was referred to Magistrate Judge Maas for General Pretrial Supervision on July 23, 2013. The referral includes all matters relating to discovery. The decision whether to stay discovery lies with Judge Maas, but it is my view that discovery should not be stayed pending resolution of any motion to dismiss. Regarding the briefing schedule for the motion to dismiss, the parties shall follow the Court's Individual Rule III.B. 4. Should the parties or Judge Maas find it useful to discuss the briefing schedule at his conference, he is free to do so.

Dated: January 11, 2016
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE